

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B06

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TY:

### LEGEND

Distributing =

Controlled =

Family A =

Family B =

State =

Business X =

Business Y =

Date Z =

a =

b =

c =

d =

e =

f =

g =

aa =

Dear

This is in response to a letter dated May 7, 2008, submitted on your behalf by your authorized representatives, requesting rulings on the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and its shareholders and accompanied by penalties of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding whether the distribution (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code")) and § 1.355-2(d), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

## SUMMARY OF FACTS

Distributing is a State, accrual basis taxpayer that files a federal income tax return with a calendar fiscal year end. Distributing has been primarily engaged in Businesses X and Y since its incorporation on Date Z (more than 5 years from the date of this letter). Business X includes assets a, b, and c. Business Y includes assets d, e, f, and g.

Distributing has outstanding aa shares of voting common stock that are owned in various amounts by the members of Family A and Family B, either in their own right or as beneficiaries of various trusts. There are no securities or other interests of any kind that could be considered a stock interest.

Financial information has been received that indicates that both Businesses X and Y have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The proposed transaction has been agreed to by and between Family A and Family B in order to resolve their differences of opinion on how best to operate the businesses of Distributing. The members of Family B see a tremendous opportunity to leverage Distributing's assets to acquire other assets. In sharp contrast, the members of Family A do not share the desires of the members of Family B to expand Distributing's operations and would prefer to operate the business as it has historically been operated. Accordingly, the Distributing shareholders have decided to split off Business Y from Business X by transferring Business Y to newly formed Controlled, and to distribute the Controlled stock to the members of Family B in exchange for their shares of Distributing.

## PROPOSED TRANSACTION

The following transaction has been proposed:

- (i) Distributing will form Controlled by transferring Business Y and its assets to Controlled solely in exchange for all of the outstanding stock of Controlled and the assumption by Controlled of certain liabilities associated with Business Y.
- (ii) Distributing will then distribute all of the Controlled shares to the members of Family B, in exchange for all of the shares of Distributing held by those Family B members. After the distribution, those Family B members will own 100% of the stock in Controlled and members of Family A will own 100% of the stock in Distributing.

Subsequent to the Proposed Transaction, both Distributing and Controlled will make elections to be treated as "S" Corporations for federal income tax purposes in the first tax year that they are eligible.

## REPRESENTATIONS

The taxpayers have made the following representations in connection with the proposed transaction:

- (a) The indebtedness, if any, owed by Controlled to Distributing after the distribution of the Controlled stock will not constitute stock or securities.
- (b) The total adjusted bases and fair market value of the assets transferred to Controlled by Distributing will each equal or exceed the amount of any liabilities assumed (within the meaning of Section 357(d)) by Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

- (c) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.
- (d) The fair market value of the Controlled stock and other consideration to be received by the Family B shareholders of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by the Family B shareholders in the exchange.
- (e) No part of the Controlled stock to be distributed by Distributing to the Family B shareholders will be received by a Family B shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (f) The liabilities assumed (as determined under Section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (g) The 5 years of financial information submitted on behalf of Distributing's Business X is representative of Business X's present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) The 5 years of financial information submitted on behalf of Distributing's Business Y is representative of the Business Y's present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
- (i) The distribution of the stock of Controlled is carried out for the following corporate business purpose: To enable each of the shareholder groups to devote their attention and apply a consistent business strategy to the business which each group is most interested in. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (j) Following the distribution, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its business.
- (k) The Proposed Transaction is not used principally as a device for the distribution of earnings and profits of Distributing or Controlled.
- (l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

- (m) For purposes of § 355(d), immediately after the distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
- (n) For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution, or (ii) attributable to distributions on Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
- (o) There is no acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the distribution of Controlled stock.
- (p) No intercorporate debt will exist between Distributing and Controlled at the time of the distribution, and no intercorporate debt will exist between Distributing and Controlled subsequent to the Proposed Transaction (except as may arise in the ordinary course of business or with respect to payments pursuant to any continuing transactions between Distributing and Controlled).
- (q) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (r) No two parties to the transaction are investment companies defined in 368(a)(2)(F)(iii) and (iv).
- (s) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.

- (t) Immediately after the Proposed Transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (u) No property with respect to which any investment credit determined under Section 46 has been (or will be) claimed will be transferred from Distributing to Controlled in the Proposed Transaction.

## RULINGS

Based solely on the information submitted and on the representations set forth above, we hold as follows:

- (1) The transfer by Distributing to Controlled of assets associated with Business Y, solely in exchange for all of the issued and outstanding stock of Controlled, plus the assumption by Controlled of certain liabilities, will qualify as a reorganization within the meaning of 368(a)(1)(D) of the Code. Distributing and Controlled will each be a party to a "reorganization" within the meaning of § 368(b) of the Code.
- (2) Distributing will recognize no gain or loss in connection with the transfer of the assets associated with Business Y to Controlled and the assumption by Controlled of certain liabilities in the Proposed Transaction. Section 361(a) and 357(a).
- (3) Controlled will recognize no gain or loss upon the receipt of Distributing's Business Y assets in exchange for Controlled stock. Section 1032(a).
- (4) Controlled's basis in each asset received in the proposed transaction will be, in each instance, the same as the basis of such assets in the hands of Distributing immediately prior to the proposed transaction. Section 362(b).
- (5) Controlled's holding period of the assets received in the Proposed Transaction will include the period during which such assets were held by Distributing. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on the distribution of the Controlled stock. Section 361(c).
- (7) No gain or loss will be recognized by and no amount will be included in the income of the members of Family B on the exchange of their stock in Distributing for the stock of Controlled in the Proposed Transaction. Section 355(a).

- (8) The basis of the Controlled stock in the hands of the Family B shareholders of Distributing will be the same as the basis of the Distributing stock surrendered in exchanged therefore. Section 358(a)(1).
- (9) The holding period of Controlled stock received by the Family B shareholders of Distributing will include their holding period of Distributing stock exchanged therefore, provided that the Distributing stock is held as a capital asset on the date of the Proposed Transaction. Section 1223(1).
- (10) As provided in Section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Treas. Reg. § 1.312-10(a).

#### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Steven J. Hankin  
Senior Technician Reviewer, Branch 6  
(Corporate)

cc: